

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

YELLOWSTONE MOUNTAIN CLUB LLC,)	
et al.,)	DOCKET NO.: PT-2004-12
)
Appellants,)	
)
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
) ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on April 27 and 28, 2006, in Bozeman, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. The appellants presented testimony in support of the appeal and were represented by Stephen E. Brown, attorney; Denise Tuohy and Bob Sumpster, vice presidents of Yellowstone Mountain Club, LLC (YMC); and Barton DeLacy, fee appraiser. The Department of Revenue (DOR) presented evidence and testimony in opposition to the appeal and was represented by Michele Crepeau, tax counsel; Acting Region 5 Manager Ty Typolt; Acting Area Manager Region 5 East, Patty White; Management Analyst Bureau Chief John Grimm; Management Analyst Dallas Reese and Danielle Eby, Paralegal.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. Testimony was taken from both the Taxpayer and the DOR, and exhibits from both parties were received. The Board allowed the record to remain open for a period of time for the purpose of receiving post-hearing submissions by both parties.

The Board upholds the Department of Revenue valuation determination.

FINDINGS OF FACT

1. Due, proper, and sufficient notice was given of this matter, the hearing on the issues, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The State Tax Appeal Board has jurisdiction over these issues pursuant to § 15-2-301, MCA.

3. The appellants are collectively referred to as Yellowstone Mountain Club (YMC). Appellant Yellowstone Mountain Development, LLC and Yellowstone Mountain Club, LLC, are owners in common, or individually own, the property on appeal.

4. YMC contested the assessment of land associated with a private ski and golf facility and described as follows (from Exh. A, Appellant's appeal form):

Section 1: Geo Code: 25-0336-01-1-01-01-0000
Parcel ID: 28002600
Legal Description: All being 665 acres less YMC Phase 1 & 2 being 394.19 acres & less N1/2 of Rainbow Minor Sub. being 11.472 acres in Section 1 7S 2E 259.338 acres

Section 2: Geo Code: 25-0336-02-1-01-01-0000
Parcel ID: 28002602
Legal Description: Government Lots 1-4, S1/2N1/1, S1/2 Sec. 2 7S 2E 663.60 acres

Section 3 Geo Code: 25-0336-03-1-01-01-0000
Parcel ID: 28002603
Legal Description: All of Section 3 7S 2E 160 acres

Section 4 Geo Code: 25-0336-04-4-01-01-000
Parcel ID: 28002640
Legal Description: SE1/4 Section 4 7S 2E 160 acres

Section 9 Geo Code: 25-0336-09-1-01-01-0000
Parcel ID: 28002604
Legal Description: All Section 9 7S 2E 640 acres

Section 10 Geo Code: 25-0336-10-1-01-01-0000
Parcel ID: 28002641
Legal Description: All Section 10 7S 2E 642 acres

Section 11 Geo Code: 25-0336-11-1-01-01-0000
Parcel ID: 28002630
Legal Description: All Section 11 7S 2E 640 acres

Section 12 Geo Code: 25-0336-12-1-01-01-0000
Parcel ID: 28002601
Legal Description: All less .81 acre tract & less 37.95 acre tract & less 10.648 acre tract being the S1/2 of Rainbow Minor Sub. & less 7.497 acres being a portion of Tract 1 in Section 12 7S 2E 583.095 acres.

Section 7 Geo Code: 25-0337-07-1-01-01-0000
Parcel ID: 28003600
Legal Description: All being 619.14 acres less Portion of Tract 1 in NE1/4 being 107 acres and less portion of Tract 1 in NW1/4 being 9.558 acres in Sec. 7 7S 3E 502.582 acres.

Section 8 Geo Code: 25-0337-08-1-01-01-0000
Parcel ID: 28003610
Legal Description: All being 640 acres less Portion of Tract 1 in NW1/4 being 51.521 acres and less Portion of YMC Phase 1 & 2 in NW1/4 being 1.839 acres & less portion of YMC Phase 1 & 2 in NE1/4 being 52.023 acres in Sec. 8 7S 3E 534.617 acres.

Section 17 Geo Code: 25-0337-17-1-01-01-0000
Parcel ID: 28003920
Legal Description: All Section 17 7S 3E 640 acres

Section 18 Geo Code: 25-0337-18-1-01-01-0000

Parcel ID: 28003900
 Legal Description: E1/2, E1/2W1/2, & Gov. Lots 1-4 Sec. 18 7S 3E 621.40 acres

Section 6
 Geo Code: 25-0337-06-1-01-55-0000
 Parcel ID: 28810017
 Legal Description: Yellowstone MTN Clubs
 Phases 1 & 2 in Sec. 6 7S 3E 1.07 acres
 Open Space SW of Lot 75

Section 6
 Geo Code: 25-0337-06-1-01-60-0000
 Parcel ID: 28810021
 Legal Description: Yellowstone MTN Clubs
 Phases 1 & 2 in Sec. 6 7S 3E 1.09 acres
 Open Space SW of Lot 168

Section 6
 Geo Code: 25-0337-06-4-03-01-0000
 Parcel ID: 28810018
 Legal Description: Yellowstone MTN Clubs
 Phases 1 & 2 in Sec. 6 7S 3E 32.677 acres
 Open Space SW of Lots 8 & 9

Section 1
 Geo Code: 25-0336-01-1-01-90-0000
 Parcel ID: 28810020
 Legal Description: Yellowstone MTN Clubs
 Phases 1 & 2 in Sec. 1 7S 2E 32.677 acres
 Open Space West of Lot 191

5. After unsuccessful informal negotiations with the DOR, the taxpayers filed an appeal with the Madison County Tax Appeal Board (CTAB) on October 22, 2004. Appeal form.

6. The Madison County Tax Appeal Board heard this appeal on March 3, 2005. CTAB transcript, page 1.

7. In its April 14, 2005 decision, the Madison County Tax Appeal Board denied the appeal, stating:

The Department of Revenue appraised this property using the same procedures as other properties in Madison County. (Appeal form).

8. On May 3, 2005, the taxpayers appealed the Madison County Tax Appeal Board decision to this Board. YMC Notice of Appeal, May 3, 2005.

9. YMC, through its counsel, Stephen Brown, withdrew its appeal on certain property originally appealed. The property withdrawn from the appeal includes (Joint Stipulation to Limit Scope of Appeal, April 25, 2006):

All improvements to the golf course located within Sections 7, 8, 17, and 18, and identified as part of geo codes 25-0337-07-1-01-01-0000, 25-0337-08-1-01-01-0000, 25-0337-17-1-01-01-0000, and 25-0337-18-1-01-01-0000.

Residential land located with Section 12, and identified as part of geo code 25-336-12-1-01-01-0000.

Commercial land identified as: a one acre-parcel of land located within Section 11 and identified as part of geo code 25-0336-11-1-01-01-0000, upon which the Timberline Café sits; a ten-acre parcel of land located within Section 11 and identified as part of geo code 25-0336-11-1-01-01-0000, upon which the Rainbow Lodge and Cabins and other structures sit; a five-acre parcel of land located within Section 12 and identified as part of geo code 25-0336-12-1-101-01-0000, upon which the Batch Plant sits; a 1.766 acre parcel of land located within Section 7 and identified as part of geo code 25-0337-07-1-01-01-0000, upon which the Lodge sits; and a three-acre parcel of land located within Section 7 and identified as part of geo code 25-0337-07-1-01-01-0000, upon which Camp Yellowstone sits.

10. The properties on appeal before this Board are all land identified and valued by the DOR as golf course land; all land identified and valued by the DOR as open space; all land identified and valued by the DOR as ski terrain; all land identified and valued by the DOR as agricultural land, including grazing land; and all land identified and valued by the DOR as timber or forest land. Joint Stipulation to Limit Scope of Appeal, April 25, 2006.

11. Yellowstone Mountain Club is a 13,000-acre private recreational and residential community in Madison County, Montana which encompasses the subject properties. Tuohy, 7; Exh. B.

12. The developers of Yellowstone Mountain Club acquired large segments of land from several property owners for the purposes of residential and recreational development. YMC converted a portion of the club land into a ski hill accessible only to its members and their guests. The ski hill includes ski lifts, groomed trails and profit centers such as restaurants and ski rentals. YMC also developed a golf course and other club facilities. Tuohy, 8-9; White, 252.

13. People must apply to become members of YMC. The YMC performs a background and financial check. If they are accepted, they must purchase their own parcel(s) of real property. Membership in the Yellowstone Mountain Club allows members and guests to use ski lifts and runs, golf, hiking, fishing, horseback riding and a number of other activities. Tuohy, 7-8.

14. In addition to the purchase price of the real property, all YMC members pay an initial deposit to YMC, which is set at \$250,000. The deposit is structured as a 30-year promissory note that YMC is required to pay back to the members. In addition to the deposit, members also pay annual dues for the use of club

amenities. The dues at the time of the appeal were \$10,333. As of January 1, 2004, YMC had approximately 137 dues-paying members. Tuohy, 8-9. Members do not have an ownership interest in the club amenities such as the ski hill or golf course. Sumpter, 31.

Ski Area and Forest Land

15. For tax year 2004, the DOR classified all areas within the ski terrain as class four commercial/residential land. The DOR rationale for reclassifying the ski terrain was that these lands had been converted from forest land to commercial use when YMC built ski runs on them. Joint Stipulation to Limit Scope of Appeal, April 25, 2006; Exh. D.

16. YMC also built certain amenities within the timbered skiable acreage that are accessible and used by skiers. Those amenities include Timberline Café, Rainbow Café and Cabins, and the Club Cabins. The classification and valuation of those buildings is not at issue. Appellants' Post Hearing Br. 2, 9.

17. YMC does not dispute the class four designation on the ski runs that have been entirely clear cut of timber and are groomed for skiing in the winter months. Appellants' Post-Hearing Br. 8-9.

18. YMC testified that the lands in between the ski runs are generally either too steep, too flat or for some other reason, are

unsuitable for skiing. For those reasons, YMC chose not to construct ski runs there. Sumpter at 37.

19. YMC opposes the change in classification from primarily class ten forest land to class four commercial/residential land for all property which was not specifically cleared for use as a ski run. Appellants' Post-Hearing Br. 6.

20. YMC is not required by permit or ordinance to designate a specific, exterior boundary for the ski area. Sumpter, 35. Originally, DOR reviewed a variety of maps and the YMC website to determine the number of acres to classify as ski terrain. White, 252.

21. Following discussions with YMC during the AB-26 process, the DOR adjusted its determination of ski terrain acreage according to a GIS map provided by YMC. White, 253.

22. The subject ski terrain was originally valued using the DOR's CALP (computer assisted land pricing) program. Using the CALP program, the DOR determined the per acre land value to be \$6,500. White, 258; Exh. 13 & 14.

23. During the AB-26 process, DOR adjusted the value to \$5,000 per acre for equity purposes. Through a settlement agreement, DOR had lowered the value per acre for another ski area near the subject to \$5,000. White, 259.

24. YMC maintains that much of the ski terrain should continue to be classified and valued as forest land. To determine the forest land acreage, YMC first calculated the acreage in the ski runs. YMC used aerial photographs to define the area of the ski runs. YMC put the actual boundaries of the ski runs on a map using a computer assisted drawing (CAD) program. Once the actual boundaries of the ski runs were defined, YMC used the CAD program to calculate the acreage of ski runs for each geocode parcel. Exh. D. Sumpter, 38-46.

25. After subtracting the acreage in the ski runs, YMC determined how many acres of forest land remained in each parcel. This was done by assuming that any area between ski runs that was smaller than 15 acres did not meet the forest land criteria under the Forest Lands Tax Act. YMC subtracted out these areas, any areas that contained commercial structures, and any area classified as grazing land. Exh. A. YMC argues that the remaining areas have not been converted from forestland classification and should be valued as forest land. Appellants' Post-Hearing Br.6-8.

26. YMC stated that it periodically generates revenue from the sale of timber from these lands and that there are no

prohibitions on commercial harvesting of the timber. Tr. 47; Exh. L.

27. YMC also argues that any use by skiers to traverse the timber terrain, or to access the amenities within those large tracts of timbered land is an incidental use which is compatible with a forest land classification. Appellants' Post-Hearing Br. 10.

28. YMC presented evidence, through its witness Barton DeLacy, a certified fee appraiser, of valuation for the ski area land. Exh. O, DeLacy 110.

29. Mr. DeLacy testified that he attempted to create a valuation model for the ski resort area separate from the rest of YMC. He testified that a reasonable income approach value could be obtained by constructing a simple model that compares the skier days and vertical lift capacity at YMC to that of other ski areas in the United States. DeLacy, 111.

30. Mr. DeLacy testified that this approach is reasonable because the ski business is a relatively mature industry, which makes comparisons relatively easy to do and accurate. DeLacy, 114.

31. Exhibit O-1 contains the assumptions used by Mr. DeLacy in his income approach. Using the 2004 YMC membership of 137,

annual dues of \$10,667, and a 118 day operating season, Mr. DeLacy determined that the net value of the ski operations at YMC would be approximately \$1,100,000. Mr. DeLacy omitted from his income approach all of the \$250,000 deposit made by each member and all earnings from the deposits because the deposits are used for capital costs rather than operations. Exh. O-1

32. Mr. DeLacy then testified that the \$1,100,000 can be allocated to the ski run acreage of 314 acres to derive a per acre value of approximately \$3,503.18 per acre. Tr. 21 However, the income method values in Appellants' Post-Hearing Brief Table 1.3 allocated the \$1.1 million value to an adjusted acreage of 324.2 acres. This produces an average value of approximately \$3,393 per acre. Appellants' Post-Hearing Brief, 14.

33. DOR argues that Mr. DeLacy's income approach fails to take into consideration certain critical issues such as the income generated by the \$250,000 initial deposits made by each YMC member. Grimm, 297.

34. DOR also notes that the 18 percent discount rate used by Mr. DeLacy in his income approach is excessive since the risk factor attributed to the possibility of a poor snow year does not exist for YMC. Its members must pay membership dues regardless of snow quality. Respondent's Post-Hearing Br. 14.

35. Still, YMC asserts that it is inappropriate to compare the ski runs at YMC with other commercial ski operations. YMC has no ability to generate independent revenue, in contrast to other local resorts such as Big Sky, Moonlight Basin or Spanish Peaks Resort. Rather, the value of the ski runs is captured in the enhanced values of the YMC lots. The value of these lots is enhanced because public access to them is limited and there are no daily charges for using the ski facility. Appellants' Post-Hearing Brief, 15-16.

36. YMC maintains that the only logical way to value the ski area is to assume that it has only a residual resource value as forest land. Due to high altitude and relatively low quality timber, that value should be \$330.63 per acre. Appellants' Post-Hearing Brief, 16.

37. YMC argues that the tax impact to Madison County is neutral because the county receives the benefit of enhanced lot values at the expense of lower ski area land values. Failure to recognize this amounts to double taxation, according to YMC. Appellants' Post Hearing Br. 16.

Golf course

38. The DOR valued 298 acres of the subject land as class four golf course land pursuant to § 15-6-134(1)(d), MCA. All land that is actually and necessarily used for a golf course must be classified as class four land pursuant to § 15-6-134(1)(d), MCA.

39. YMC does not dispute this classification. YMC contends instead that the DOR's appraisal of the golf course land is flawed. Appellants' Post-Hearing Br. 18. YMC's golf course was not open during the period in question and membership dues were decreased as a result. Tuohy, 8-9.

40. The DOR reclassified this land from forest land to commercial land based upon its use as a golf course and valued the property at \$6,500 per acre based on comparative sales data using the CALP for large acre commercial sales. White, 248-294; Exh. 13 & 14; DOR's Post-Hearing Br., 15.

41. The DOR reviewed the \$6,500 per acre value placed on YMC's golf course land by comparing it to the value placed on other golf course land in the vicinity. DOR determined that the value placed on YMC golf course properly fell between the low value of \$5000 per acre and the high value of \$12,000 per acre

assessed against other comparable golf courses. Exh. 15; White, 250.

42. As with the ski runs, YMC asserts that the value of the golf course land is captured in the real estate values of the individual residential lots. Therefore, in order to perform a valid sales analysis, the DOR would have to look at similarly situated right-to-use golf courses, which YMC claims the Department has not done. Appellants' Post-Hearing Br. 19.

43. YMC argues it has been subjected to what amounts to double taxation because the DOR is assuming that the YMC golf course should be treated the same as any other golf course even though it is not accessible to the public. Appellants' Post-Hearing Br. 19.

44. For the golf course property, Mr. DeLacy has applied a "residual resource value" of \$330.63 for a total value of \$80,674 for the golf course land. DeLacy, 128-129.

Open Space

45. In the 2004 reappraisal, DOR reclassified four parcels of land designated as open space in Yellowstone Mountain Club Subdivision Phases 1 & 2 from class ten forest land to class four residential/commercial tracts. Two parcels are relatively small,

1.070 acres and 1.090 acres respectively. The other two parcels are 32.667 acres and 330.320 acres. Exh. A.

46. YMC does not oppose DOR's classification and value for the two smaller parcels. Appellants' Proposed Conclusions of Law 18 and 19.

47. YMC maintains that the two larger parcels should continue to be classified as class ten forest land. In support of this position, YMC points to the Department's 2002 Forest Land Classification and Appraisal Manual (Exh. T) which specifically addresses the issue of open space as follows:

Use classification is based on the actual use of land. Land platted as a subdivision is not basis alone to classify land as residential property. Bare land in most rural subdivision is classified as forest, nonqualified agricultural or agricultural land. A subdivision with minimal improvements to the land does not justify residential classification unless the contiguous ownership(s) is less than 20 acres in size or does not meet the forest eligibility requirements. (Manual at 6-6, ¶2).

48. YMC notes that both of the larger parcels are greater than 20 acres in size and the Club asserts that they meet the forest eligibility requirements. Appellants' Post-Hearing Brief, 21.

49. In regard to the valuation of these two parcels, YMC argues that the value of \$330.63 for Class IV timber land in Zone 3 is the proper per acre value. Appellants' Post-Hearing Brief, 22.

50. DOR has classified the four open space parcels as class four tract land because they are designated as "open space" in a platted subdivision. White, 263.

51. DOR Administrative Rule 42.20.156 specifies when the Department must change the classification of land from class ten forest land to class four residential/commercial land. Grimm, 294. Subsection 1(d) of Rule 42.20.156, ARM, states that the classification of the land must be changed when the land is "part of a platted and filed subdivision, and the land contains three or more . . . physical site improvements" which include, among others, a community sewer system or water system; street curbs and gutters; a paved or all-weather gravel road that meets county standards; underground or aboveground utilities that may include gas, electricity, telephone, or cable television; landscaping developed for the aesthetic benefit or security of all the landowners; or the land contains or is used in direct support of commercial or industrial activities including a storage tank, a cellular communication tower, or a parking lot. Subsection 3 of this Rule requires that, after such a change in classification, the valuation of the property is to be set using market values.

52. DOR changed the open space classification to class four and put a market value on it "based on that administrative rule and

what exists up there at Yellowstone Mountain Club." Grimm, 294-295.

53. To value the open space parcels, the Department began with the per acre value derived from the CALP for Neighborhood 18 in Gallatin County, the neighborhood that is the Yellowstone Mountain Club. Recognizing that open space is "encumbered by use restrictions", DOR next calculated an influence factor to determine the reduction in value caused by such use restrictions. White, 239-243.

54. The influence factor was based on one sale of forty acres of open space land in Gallatin County. The Department compared the sales price of this parcel, which was encumbered with use restrictions, to the sales price for similar sized parcels in the same area, parcels that were not designated as open space and, therefore, were not likely to have use restrictions. DOR found that the value of the open space land was about 75% less than the value of land that was unencumbered by use restrictions. Accordingly, the Department reduced by 75% the value of the property designated as open space in YMC and placed the resulting value of \$2,560 per acre on all four parcels. DOR's Post-Hearing Brief, 16-17; White, 241-243; Exh. 4, 5, 6, 7, and 8.

BOARD DISCUSSION

1. The State Tax Appeal Board has jurisdiction over these issues pursuant to § 15-2-301, MCA.

2. Yellowstone Mountain Club, LLC, et al., (YMC) are the Appellants in this proceeding and therefore have the burden of proof.

3. As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. Farmers Union Cent. Exch. v. Department of Revenue, 272 Mont. 471, 901 P.2d 561, 564 (Mont. 1995); Western Airlines, Inc., v. Michunovich (1967), 149 Mont. 347, 353, 428, P. 2d, 3, 7, *cert. denied* 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

4. The DOR is charged with assessing all property and equalizing value. Section 15-8-101, MCA. All property must be valued at 100 percent of its market value unless otherwise provided. Section 15-8-111 (1), MCA. The DOR may not adopt a lower standard of value than market value unless authorized by law. Section 15-8-111 (3), MCA.

5. Specific classes of property have been created for the purpose of determining property valuation for purposes of taxation. All land must be classified according to its uses. Section 15-7-103 (2), MCA.

6. Class four property includes all land except that specifically included in another class. Section 15-6-134, MCA.

7. Forest land, as defined by § 15-44-102, MCA, is taxed as class ten property pursuant to § 15-6-143, MCA.

8. Forest land is defined as "contiguous land of 15 acres or more in one ownership that is capable of producing timber that can be harvested in commercial quantity and is producing timber unless the trees have been removed by man through harvest, including clearcuts, or by natural disaster, including but not limited to fire. Forest land includes land:

(a) that has not been converted to another use; and

(b) on which the annual net wood production equals or exceeds 25 cubic feet an acre at the culmination of mean annual increment." Section 15-44-102, MCA.

9. Valuation of class ten forest land is based on 100% of the forest productivity of the land. Section 15-8-111(7), MCA. The method used to value forest land is set forth in § 15-44-103, MCA, and associated administrative rules. See Rule 42.20.701, ARM, *et*

seq. The Department of Revenue is bound by these statutory directives to classify and value land.

Classification of Ski Terrain

10. YMC argues that the land within the ski boundaries has not been converted from forest land to another use, except for the ski runs themselves, which have been cleared specifically for use by skiers.

11. Yellowstone Mountain Club did not, however, provide sufficient evidence that the DOR class four designation of the entire ski terrain was incorrect.

12. For example, there is no evidence that the land in question "can be harvested in commercial quantities." There is no proof that the land is capable of producing 25 cu ft./ac/yr. as required by § 15-6-143, MCA, and Rule 42.20.161(a), ARM. In fact, testimony by Robert Sumpter of Yellowstone Mountain Club claims that the value of the timber is very low and it is not easily accessible.

13. In addition, the Yellowstone Mountain Club provides no evidence that the trees standing within the 15 acre, or larger, parcels between ski runs are of timber harvest quality or quantity as required by § 15-6-143, MCA, Rule 42.20.161, ARM, and the forest land eligibility requirements as set forth in the Montana

Department of Revenue Forestland Classification and Appraisal Manual. See Exh. T, p 6-2 (Criteria listed.) For example, the Taxpayer has not shown that there is minimum crown closure (6-3), that the land can meet minimum productivity requirements (6-3), or that the appropriate type of tree is available for harvest (6-2).

14. YMC, however, does advertise 2,200 skiable acres with 60 runs. Tr. P 293. In addition, YMC has built amenities within the timbered areas that are accessible and used by skiers. Those amenities include Timberline Café, Rainbow Café and Cabins, the Club Cabin and the Batch Plant. See Exh. 1. It would not be possible, given the neighboring residential landowners and the club's purpose, to produce commercial quantities of timber within the bounds of the skiable area.

15. This is confirmed by the assumption throughout Barton DeLacy's appraisal for Yellowstone Mountain Club. He notes "[t]he operation of ski runs and a golf course have been designed as an integral part of the amenity package reflected in property sale values within the YMC. Just as the vast open spaces preserved through conservation easement restriction enhances the homesite values, so do the relatively limited 'improved areas' used for skiing and golf." Exh. O, p 16. He further notes that the land being appealed "does not produce income but is maintained by the

YMC for the benefit of lot owners who have already paid premiums reflecting that value in the lot prices." Exh. O, p 19.

16. These facts, taken together, demonstrate that Yellowstone Mountain Club has conclusively converted the land from "forest land" to another commercial use. The presence of commercial activities in acreage outside of the ski runs demonstrates that, as Mr. DeLacy wrote, these areas "have been designed as an integral part of the amenity package."

17. The evidence indicates that land within the skiable area is properly classified as class four commercial land.

18. Because the appropriate classification of the property is class four, we need not address the valuation of class ten forest land in this matter.

Valuation of Ski Runs

19. In regard to valuing the ski hill property, this Board cannot concur with the income approach set forth by Mr. DeLacy.

20. Mr. DeLacy calculates a number of "ski days" based on the YMC membership level as of the assessment date to determine valuation by the number of skiers on the hill. This does not account for the fact that each club member must pay annual dues regardless of the number of days they ski at the club or even whether they ski at all. Mr. DeLacy utilized an 18% discount rate

in his income approach to compensate for the risk of potentially poor snow years. Again, however, each member must pay annual dues regardless of the quality or quantity of the snow, which substantially reduces the risk and, therefore, any discount rate that is used.

21. In addition, Mr. DeLacy failed to include in his calculations any portion of the income stream generated by the \$250,000 promissory note held by the Yellowstone Mountain Club from each member. At least a portion of the income stream from that promissory note, or the earnings on it, is likely attributable to the ski operation.

22. Finally, there is no documentation to support Mr. DeLacy's assumptions about what portion of the Yellowstone Mountain Club income generated through annual dues would be attributable to the downhill ski operation versus the golf course or other amenities available to the membership.

23. The Department did not use an income approach because it had insufficient information to undertake this approach for calculation of value. Thus, the Department utilized a comparative sales methodology to determine valuation for all land designated as ski terrain, including the ski runs.

24. It is clear that the Legislature intended the Department to utilize the cost approach, the market approach, and/or the income approach to value commercial property, depending upon the available market data. Albright v. Department of Revenue, 281 Mont. 196, 208; 933 P.2d 815; 823 (1997).

25. Given the evidence presented in this case, Yellowstone Mountain Club has failed to bear its burden of proof to demonstrate that the Department's valuation of the ski runs is incorrect.

Valuation of Forest Land Outside the Boundaries of the Ski Terrain

26. YMC also contests the value of certain forest land outside the boundaries of the ski area and requests a \$330.36 per acre valuation.

27. Land qualifying as forest land is valued based on productivity. Section 15-44-103, MCA. The Department may not deviate from the statutory directive for valuation of forest land.

28. Yellowstone Mountain Club argues that all of the forest land should be valued at the lowest grade of forest land because of low quality timber. Appellants' Post-Hearing Br. 16.

29. Yellowstone Mountain Club did not contest the Department of Revenue calculations for the productivity grades within valuation zone three, the zone in which YMC is located. Appellants' Post-Hearing Br. 16

30. Because the Department followed the statutory mandate for calculation of the value of the timberland and Yellowstone Mountain Club failed to show that the value was improperly calculated, the Board finds that the DOR calculations for forest land values are correct.

Golf Course Land

31. The DOR calculated the golf course valuation based on comparative sales data from large acre, vacant, commercial land sales in the surrounding areas. See Exh. 13 & 14. See also Rule 42.20.107, ARM.

32. The Department also reviewed comparable sales of golf courses, both private clubs for high-net worth individuals and public courses with similar amenity packages, to confirm that the valuation applied to YMC's golf course was equitable. See § 15-7-111, MCA. See Exh. 15.

33. YMC opposes the DOR valuation on the basis that the only properties comparable to the YMC golf course would be other "right-to-use" club situations. YMC reiterates its position that the value of the golf course (like the value of other club amenities) is captured in the value of the residential lots. Thus, the golf course should be assessed at only a "resource" value. Appellants' Post-Hearing Br. 19.

34. It is not for this board to determine whether DOR could have used different data for analysis. It is the duty of the Board to determine whether the appellant has demonstrated that the Department's valuation was improper. The appellant has failed to do so. The DOR has supported its assessed value with documented evidence.

35. The Board concludes that Yellowstone Mountain Club has failed to overcome the presumption that the Department's valuation is correct.

Open Space

36. YMC argues that the two large open space parcels in the Yellowstone Mountain Club Subdivision Phases 1 & 2 should be classified as class ten forest land because they are each greater than 20 acres in size and they both meet the forest eligibility requirements and qualifications set out in the Department's 2002 Forest Land Classification and Appraisal Manual. Since these parcels meet the requirements to be classified as forest land, YMC asserts that they should be valued as Class IV forest land in zone three and appraised at \$330.63 per acre.

37. DOR points out that Rules 42.20.156(1)(d) and (3), ARM, clearly set out when the classification of land within a platted

subdivision should be changed from forest land to residential/commercial land and bases the criteria for that change on verifiable alterations in a subdivision. The Department argues that the platted subdivision in YMC meets the criteria in the administrative rule that require the open space land to be changed from a forest land classification to a residential/commercial classification and to be valued as class four tracts.

38. Section 15-2-301(4), MCA, specifies "The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful." The rule pertinent to YMC's appeal does not appear to be arbitrary, capricious, or otherwise unlawful and the Board is therefore required to give that rule full effect.

39. Further, an administrative rule has substantially more weight as guidance for the Department's actions than a Department manual has. YMC relied on the DOR Forest Land Manual and failed to address the administrative rule. YMC provided no other interpretation of the statute or the rule to lead the Board to a different conclusion from the one used by DOR, i.e., that the open

space no longer qualifies as forest land and must be classified and valued as class four property.

40. The Board finds that the DOR classification is the proper classification for all four open space parcels.

41. Since it is not appropriate to classify the open space parcels as forest land, the Board cannot adopt the value requested by YMC. Other than YMC's requested value, there is no material in the record that would suggest a market value for these parcels different from the DOR value. Thus, the Board adopts the DOR value of \$2,560 an acre for the YMC open space parcels.

Other

42. All property in Montana is subject to taxation unless otherwise exempted. Section 15-6-101(1), MCA. All property must be valued at 100% of its market value, unless otherwise provided by law. Section 15-8-111 (1), MCA.

43. Yellowstone Mountain Club, LLC and Yellowstone Mountain Development LLC are legal entities distinct from any residential land owner within the YMC area. Residential land owners are members of YMC, but members do not have an ownership interest in the club amenities or the development arm of YMC.

44. Thus the argument by YMC that double taxation occurs when the state taxes individual lot owners on the "enhanced value"

of their lots and also taxes YMC on the club amenities that
"enhance" the value of the residential lots runs counter to the
requirements of Montana law. Montana statutes direct DOR to assess
each owner at 100 percent of market value of that owner's property.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board that the Department of Revenue's classification and valuation in this matter are upheld.

Dated this 21st day of December, 2006.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

/s/_____
KAREN E. POWELL, Chairwoman

/s/_____
JOE R. ROBERTS, Member

/s/_____
SUE BARTLETT, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of December, 2006, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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